

REMARKS

In an Restriction Requirement dated April 27, 2006, restriction was required under 35 U.S.C. § 121 between Group I, claims 1-9 and 26-34, and Group II, claims 10-25. The Office Action stated this requirement for restriction is "based on subcombinations usable together."¹ Applicants respectfully traverse this Restriction Requirement for the reasons provided below.

"Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why each invention as claimed is either independent or distinct from the others; and (B) the reason why there would be a serious burden on the examiner if restriction is not required." MPEP § 808 (emphasis added). Reasons for insisting on restriction include a serious search burden as evidenced by separate classification, status, or field of search. See MPEP § 808.02. However, two or more claimed subcombinations, disclosed as usable together in a single combination, and which can be shown to be separately usable, are generally not restrictable if the subcombinations overlap in scope. See § MPEP 806.05(d).

Applicants respectfully traverse the outstanding Restriction Requirement because, *inter alia*, it improperly fails to provide any evidence that the alleged inventions require a different field of search and would impose an undue burden on the Examiner. Further, in laying out the requirement for restriction, the Office Action has implied that the alleged sub-combinations do overlap in scope in such a manner as would suggest a division to be improper. For example, the Office Action states, on page 2, that Group II,

¹ The Office Action contains a number of statements reflecting characterizations of claim groupings. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

claims 10-25, is “drawn to a **heating circuit in fluid contact with the secondary circuit.**” Claim 28, a dependent claim in Group I, recites, “at least one **heating circuit in fluid communication with the secondary circuit.**” Similarly, the Office Action states that Group I, claims 1-9 and 26-34, is “drawn to **controlling either a cooling circuit or secondary circuit when an ambient temperature is outside a desired ambient temperature range.**” Claim 21, a dependent claim in Group I, recites, “a **controller...operable to change the operation of the cooling circuit, the secondary circuit, and the at least one heating circuit when the current ambient condition is outside of a desired ambient condition range.**” In other words, the features alleged by the Office Action to make Group I distinct from Group II can be found in both Group I and Group II. Similarly, the features alleged by the Office Action to make Group II distinct from Group I can be found in both Groups I and II. Therefore, there is no separate classification, status, or field of search and there can be no serious search burden on the Examiner. Applicants also note that the Office Action does not provide classification of these groups of allegedly distinct inventions. Further, the statements found in the Office Action would seem to suggest that the Office finds there is an overlap in scope between the claim groupings and therefore, these groups cannot be “subcombinations usable together” as defined in the MPEP.

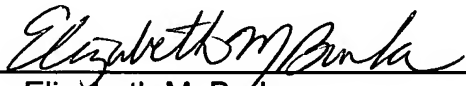
As noted above and as clearly explained in the MPEP, when there is no clear indication of separate future classification and field of search, no reasons exist for dividing among independent or related inventions. Based on the statements made in the Office Action (and the lack thereof), there is no reason to believe that there is a future separate classification nor that there is a different field of search. In addition, the

Office Action implies an overlap in scope thus negating statements that a restriction is required because these are "subcombinations usable together." In view of the above, Applicants provisionally elect, with traverse, Group I, claims 1-9 and 26-24. However, Applicants assert that the requirement for restriction is improper and should be withdrawn.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 
Elizabeth M. Burke
Reg. No. 38,758